



Engineering Department

DATE: July 20, 2021

FROM: Gabe Schell, City Engineer

ITEM: Memorandum of Understanding (MOU) with Bismarck Parks and Recreation District

REQUEST:

Consider approval of a Memorandum of Understanding with Bismarck Parks and Recreation District regarding City's financial contribution for the purchase of lease portions of Lions Park.

Please place this item on the July 27, 2021 City Commission meeting agenda.

BACKGROUND INFORMATION:

Lounsberry's Bismarck Outlots Lots 5 and 6 have been leased to Bismarck Parks and Recreation District (BPRD) by St. Mary's Church on a 99-year lease beginning May 1, 1928 and scheduled to end April 30, 2027. BPRD has entered into a purchase agreement with St. Mary's Church to purchase the property contingent on grant approval.

The City of Bismarck has municipal infrastructure installed in this property (see exhibit at the end of this memo). There is an easement of record for the waterline encumbering Lot 5. However, there is not a recorded easement for the storm sewer and ground water collection facilities within Lot 6. The MOU for the Board's consideration would allow the continued use of this infrastructure on Lot 6 in exchange for a financial contribution from the City to BPRD for the value of the land the facilities are encumbering. The City's funds along with BPRD's local and grant funding would be used to purchase the property from St. Mary's Church. If BPRD does not move forward with purchasing the property, the City would need to engage in negotiations with St. Mary's Church independently for permission to maintain the existing facilities in their current location.

This MOU would be funded through the Stormwater Utility Fund.

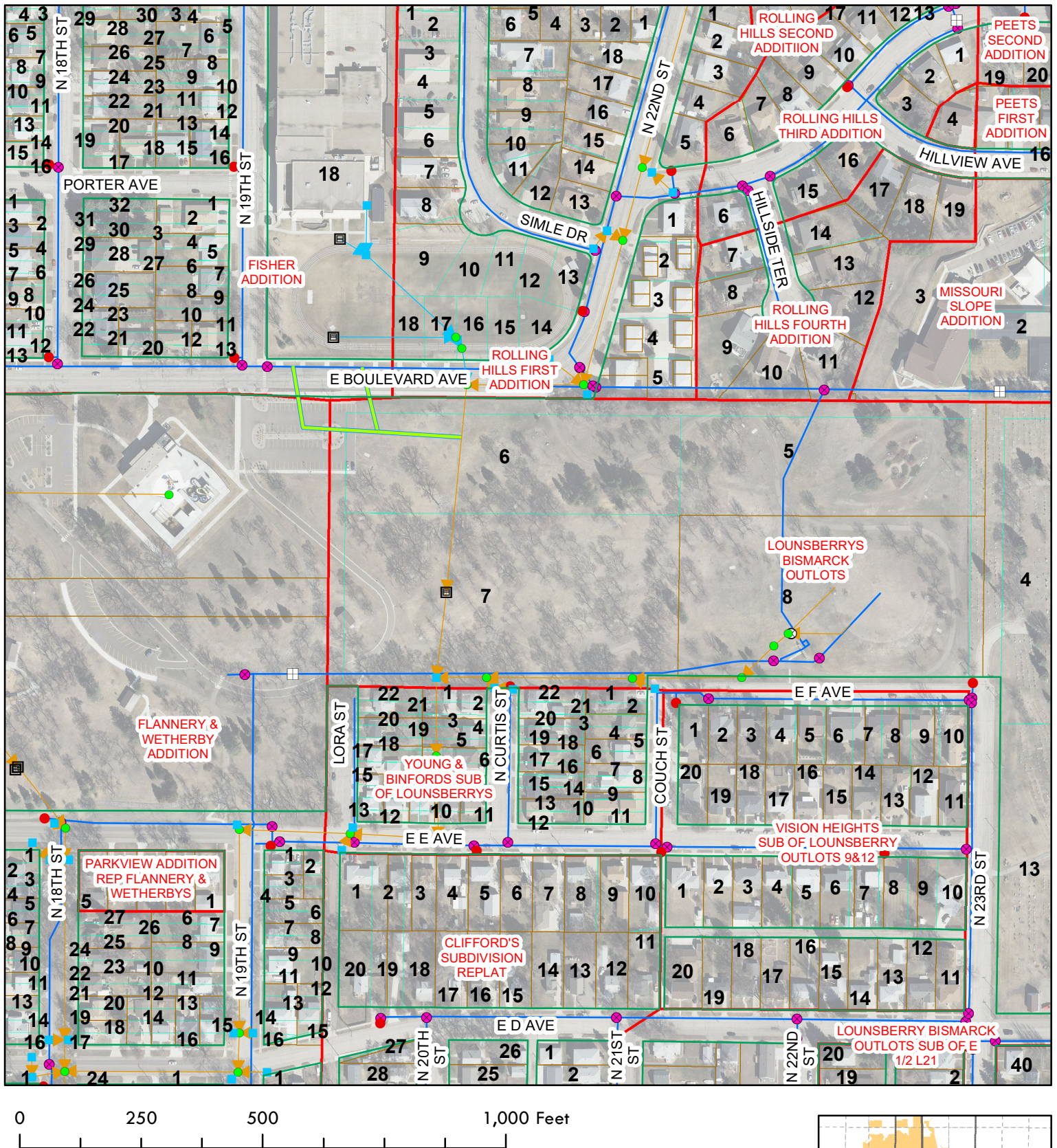
This MOU would be considered by the Bismarck Parks and Recreation District at their August meeting.

RECOMMENDED CITY COMMISSION ACTION:

Approve the Memorandum of Understanding with Bismarck Parks and Recreation District regarding City's financial contribution for the purchase of lease portions of Lions Park.

STAFF CONTACT INFORMATION:

Gabe Schell, PE | City Engineer, 355-1505 or gschell@bismarcknd.gov



MEMORANDUM OF UNDERSTANDING

Park District of the City of Bismarck, a park district under the laws of the State of North Dakota, 400 East Front Avenue, Bismarck, North Dakota 58504 ("**Owner**") and the City of Bismarck, a municipal corporation under the laws of the State of North Dakota, 221 North 5th Street, Bismarck, North Dakota 58501 ("**City**"), agree as follows:

1. **Sale and Conveyance of Easement.** Owner agrees to sell, convey, assign, transfer and deliver to City, and City agrees to purchase, acquire, and take from Owner, a storm sewer, drainage and underdrain easement across certain real property within Lot 6 of Lounsberry's Outlots including vacated right of ways, City of Bismarck, County of Burleigh, State of North Dakota.

2. **Purchase Price and Payment.** The agreed selling price for the easement is one hundred sixty thousand dollars (\$160,000) which shall be paid upon the date of closing.

3. **Closing.** The Closing Date shall be on or before December 31, 2021. Seller shall deliver at the time of closing an Easement in the same or similar form to the one depicted on Exhibit A. If Owner does not purchase the property in fee prior to this date, this Memorandum shall become void.

4. **Survival.** All the terms, covenants, conditions, representations, warranties and agreements of this Agreement shall survive and continue in force and effect and shall be enforceable after the date of closing and delivery of the Easement.

5. **Effective Agreement and Assignment.** This Agreement shall become effective and shall be binding upon the parties only after it has been executed by all the parties. This Agreement may not be assigned without the consent of the other party.

6. **Entire Agreement; Modification.** This Agreement constitutes the entire and complete agreement between the parties and supersedes any prior oral or written agreements between the parties with respect to the property. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions set forth herein, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless in writing and duly executed by the parties.

7. **Binding Effect.** All covenants, agreements, warranties, and provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors, and assigns. When used herein, the singular shall include the plural, the plural shall include the singular.

8. **Controlling Law.** This Agreement has been made and entered into under the laws of the state of North Dakota and said laws shall control its interpretation.

9. **Time of Essence.** Time is of the essence as to all dates and time periods set forth in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written below.

CITY:

City of Bismarck

Dated this _____ day of _____, _____.

ATTEST:

CITY OF BISMARCK, NORTH DAKOTA

Keith J. Hunke
City Administrator

Steve Bakken, President
Board of City Commissioners

OWNER:

Park District of the City of Bismarck

Dated this _____ day of _____, _____.

Julie Jeske, President, Board of Park Commissioners

Date _____

EXHIBIT A

STORM SEWER, DRAINAGE & UNDERDRAIN EASEMENT

This indenture, made this _____ day of _____, 20____, between **Park District of the City of Bismarck**, a park district under the laws of the State of North Dakota, whose post office address is 400 East Front Avenue, Bismarck, North Dakota 58504, Grantor, and the **City of Bismarck**, a municipal corporation, whose post office address is P.O. Box 5503, Bismarck, North Dakota 58506-5503, Grantee.

1. For and in consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor grants to Grantee, its successors and assigns, an exclusive easement to construct, operate, maintain, and repair public utility facilities including storm sewer, drainage and underdrain under or upon the real property hereinafter described, together with the right to remove trees, brush, undergrowth, and other obstructions interfering with the location, construction, and maintenance of said utility. Grantee shall have the right to ingress and egress across real property of Grantor for the purpose herein granted.
2. This Easement is, except for right of access, limited to all currently installed ground water collection systems, stormwater pipes, assorted facilities, and detention and conveyance areas within Lot 6 of Lounsberry's Outlots including vacated right of ways, City of Bismarck, Burleigh County, North Dakota.
3. Grantee shall, after completing the above-described construction or installation, or after the exercise of any rights granted by this easement, restore the lands to as near their original condition as reasonably possible and remove all debris, spoils, and equipment resulting from or used in connection with the construction or installation or access to the lands. Grantee agrees to pay for damage to fences and growing crops arising from construction, operation, or maintenance.
4. Grantor agrees to not erect or permit any structure or obstruction other than fences or driveways, change the ground elevation, or perform any act that interferes with Grantee's rights under this easement, except with the written consent of Grantee.
5. The term of this easement herein reserved is ninety-nine (99) years, beginning upon execution in 20____ and ending in 21____.

6. Grantor hereby reserves title to and any interest in any and all archeological and paleontological materials, whether located on or below the surface of said land.

Dated this _____ day of _____, 20__.

Julie Jeske, President Board of Park Commissioners

Date

STATE OF NORTH DAKOTA)
) SS
COUNTY OF BURLEIGH)

On this _____ day of _____, 20__ before me personally appeared Julie Jeske, known to me to be the person who is described in, and who executed the within and foregoing instrument and who severally acknowledged to me that they executed the same.

Notary Public

Acceptance of dedicated lands by the **City of Bismarck**:

Steve Bakken, President
Board City Commissioners

Attest: _____
Keith J. Hunke
City Administrator

STATE OF NORTH DAKOTA)
) SS
COUNTY OF BURLEIGH)

On this _____ day of _____, 20____, before me personally appeared Steve Bakken, President of Board of City Commissioners, and Keith J. Hunke, City Administrator, known to me to be the persons who are described in, and who executed the within and foregoing instrument and who severally acknowledged to me that they executed the same.

Notary Public